



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the
Request for Opinion concerning
the conduct of DYLAN V. FREHNER
former Deputy District Attorney,
Lincoln County, State of Nevada.

Request for Opinion No.: 07-48C

EXECUTIVE DIRECTOR'S SUPPLEMENTAL REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

The following is the Executive Director's supplemental report and recommendation based on the additional information requested during the Panel Proceeding held on March 13, 2008 (**TAB 1**).

During the proceeding, the Panel members found that just and sufficient cause does not exist to hold a hearing on the alleged violations of NRS 281A.400.3 and 281A.430. These allegations were dismissed.

The Panel requested additional information on the other allegations. Specifically, the Panel requested staff to conduct interviews to determine the following:

- Did the Lincoln County Water District Board (water district) members solicit Dylan Frehner (Frehner) for the position of general counsel/provisional general manager or did Frehner solicit the Board for the position?
- Did the Lincoln County Board of Commissioners (Commissioners) know of the relationship between John Lovelady (Lovelady) and Frehner before the decision was made to select Lovelady for the position of county manager?
- Did Frehner influence the selection process for the position of county manager?
- Did the Commissioners follow standard operating procedures in the selection process for the county manager position?

Interviews were conducted and affidavits were obtained from the following county commission and water district members: Chair Ronda Hornbeck (Hornbeck); Spencer Hafen (Hafen); and former member, Hal Keaton (Keaton). An interview and affidavit was also obtained from the former county district attorney, Philip Dunleavy (Dunleavy) (**TAB 2**).

Executive Director's Supplemental Report And Recommendation Regarding Just And Sufficient Cause (continued)

The following is a summary of the interviews conducted:

- Did the Lincoln County Water District Board members solicit Frehner for the position of general counsel/provisional general manager or did Frehner solicit the Board for the position?

The water district board members discussed the idea of combining general counsel and provisional general manager into one position for the Lincoln County Water District prior to any discussions with Frehner. They approached Frehner about the combined position because filling each position separately would be cost prohibitive.

There was a concern that under the newly elected district attorney, Frehner would no longer be counsel to the water district. If Frehner stayed with the district attorney's office, he could not be general counsel to the water district. The water district needed a full time general counsel and at least a part-time general manager for the water district. There was a significant amount of discussion between Hornbeck and Hafen before beginning the recruiting process for the position with the water district.

- Did the Commissioners know of the relationship between Lovelady and Frehner before the decision was made to select Lovelady as the county manager?

Dunleavy stated that Frehner made full disclosure to him that one of the applicants was his father-in-law, and full disclosure was also made to the Commissioners. Hornbeck and Hafen stated that they became aware of the relationship between Frehner and Lovelady at some point before they selected Lovelady for the position. Keaton stated that he became aware of the relationship when he interviewed Lovelady.

- Did Frehner influence the selection process for the position of county manager?

Hafen and Keaton indicate that there was no pressure from Frehner or anyone else to select Lovelady for the position. All the affiants stated that Lovelady was the more qualified applicant. Hornbeck stated that she made the statement that she would like to see more than two applicants, but that this is a standard statement that she makes when recruiting for management positions. The affiants stated that it is difficult to find qualified applicants for management positions due to the remote location and lack of services and shopping.

Regarding the hiring of Frehner's father-in-law, Hornbeck was not on the sub-committee that reviewed the applicants. Hornbeck stated that they have a hard time getting people to apply for jobs in Lincoln County due to the remoteness of the area. Hornbeck didn't know who the applicants were at the October 16, 2006 meeting, but at a later meeting, she recalled someone saying that Frehner was related to one of the applicants.

Executive Director's Supplemental Report And Recommendation Regarding Just And Sufficient Cause (continued)

- Did the Commissioners follow standard operating procedures in the selection process for the county manager position?

The responses indicated that the process used for selection of the county manager was the same procedure used in the hiring for other similar positions.

Conclusion and Recommendation:

Issue of the employment contract with the water district:

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion whether Frehner violated **NRS 281A.400.1** by allegedly departing from the faithful and impartial discharge of his public duties as deputy district attorney when he sought and accepted his current position.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion whether Frehner violated **NRS 281A.400.2** when he allegedly used his position in government to secure or grant an unwarranted privileges for himself. Although he made the proposal to the water district to cancel the contract with the District Attorney's office and hire him by contract to act as general counsel and provisional general manager, the water district was already recruiting for a manager.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion whether Frehner violated **NRS 281A.400.5**. He did not have any more or any less information than the general public regarding the fact that the water district was interested in hiring a general manager and that they needed legal services.

It is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion whether Frehner violated **NRS 281A.400.10** when he allegedly acted in his official capacity of deputy district attorney assigned to the water district while he was seeking the employment contract with the water district.

In the water district minutes of December 4, 2006 and December 18, 2006, Frehner is presenting information to his client regarding the termination of the contract with the District Attorney's office and the proposal for his own employment contract while at the same time providing legal advice to his client, the water district. The December 18, 2006 minutes indicate that Dunleavy was present during the agenda item that discussed these items, and he too was providing legal advice to water district. Therefore, Frehner was not the sole provider of legal advice to the water district concerning these items.

Executive Director's Supplemental Report And Recommendation Regarding Just And Sufficient Cause (continued)

During his interview, Dunleavy stated that he does not recall being at the December 4 or the December 18 water district board meetings.

During her interview, Hornbeck stated that legal representation for the water district "went back and forth between Frehner and Dunleavy, with Frehner deferring to Dunleavy in several instances."

Issue of the contract to hire Frehner's father-in-law:

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** that Frehner violated **NRS 281A.400.2** when he allegedly used his position as deputy district attorney to secure the position of county manger for his father-in-law, because there was no unwarranted benefit secured.

The record reflects that there were two commissioners assigned to handle the consideration of the applicants and interview them. Those two commissioners determined that Lovelady was the most qualified candidate and it would be in the public interest to hire him for the position of General Manager. There was adequate reason for the County Commission to hire Lovelady.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** that Frehner violated **NRS 281A.400.5** when he allegedly acquired information that was not available to the general public, because the information was discussed in various public meetings and the recruitment had been advertised.

The position for county manager had been discussed in public meetings of the county commission and the county had an open recruitment that was advertised. At least one other person applied for the position in addition to Frehner's father-in-law.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** that Frehner violated **NRS 281A.420.4** when he allegedly failed to disclose his relationship with his father-in-law at the county commission meeting at which his father-in-law was hired. Since Frehner is not a member of the County Commission, there is no requirement in NRS 281A for him to make such a disclosure in a public meeting.

**Executive Director's Supplemental Report And Recommendation
Regarding Just And Sufficient Cause (continued)**

Public officers and employees are required to disclose conflicts to the supervisory head of their organization when they are not a member of a public body. In this instance, the November 20, 2006 minutes of the county commission reflect the fact that Frehner disclosed his conflict to his supervisor, Dunleavy.

REPORT PREPARED BY:

Matt C. Di Orto DATED: 4/7/08
MATT C. DI ORIO
SENIOR INVESTIGATOR

APPROVAL AND RECOMMENDATION BY:

Patricia D. Cafferata DATED: April 7, 2008
PATRICIA D. CAFFERATA, ESQ.
EXECUTIVE DIRECTOR